



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,947	03/14/2007	Anthony Maquet	W004 P01350-US	9537
3017	7590	04/04/2011	EXAMINER	
BARLOW, JOSEPHS & HOLMES, LTD. 101 DYER STREET 5TH FLOOR PROVIDENCE, RI 02903			MELLON, DAVID C	
			ART UNIT	PAPER NUMBER
			1777	
			MAIL DATE	DELIVERY MODE
			04/04/2011	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**

***Response to Amendment***

1. The amendment to claim 8 would overcome the 112 2<sup>nd</sup> paragraph rejection. However, it presents new issues that would require further consideration.

***Response to Arguments***

2. Applicant's arguments filed 3/23/2011 have been fully considered but they are not persuasive.

In response to applicant's argument that Junker teaches rigid non-rubber like plastics, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argues that Junker does not provide for two flaps. This argument is not persuasive. The material extending over and covering both sides of the filter element in Junker is equivalent to a flap structure.

With respect to the specific material of claim 8, due to the limitation previously that it had to be "the same material", the scope was indefinite. With respect to claim 7, it is implied in Hibble that either the material is the same or obviously the same.

### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID C. MELLON whose telephone number is (571)270-7074. The examiner can normally be reached on Monday through Thursday 9:00am-5:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vickie Kim can be reached on (571) 272-0579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1777

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tony G Soohoo/  
Primary Examiner, Art Unit 1774

/D. C. M./  
Examiner, Art Unit 1777